*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.483 and 484 of 2006

%24-01-2006

Valluri Anuradha D/o V.Chandramouli (W.P.No.483/2006)

Valluri Sujatha, W/o Dr.V.Chandra Mouli and others (W.P.No.484/2006)

..PETITIONERS

Vs.

$ Sub-Registrar, Saroornagar, RR District and others

(in both the writ petitions)

..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr. T.S.Anand (in both the writ petitions)

^ COUNSEL FOR RESPONDENT No.1 : G.P.for Revenue
COUNSEL FOR RESPONDENT No.2 : G.Rama Rao

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>HEAD NOTE:

?CASES REFERRED:

1. 2004 (2) ALD 317
2. 2004 (1) ALT 174

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THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION Nos.483 and 484 of 2006

COMMON ORDER:

The writ petition No.484 of 2006 is filed by three petitioners. The first petitioner is mother of petitioners 2 and 3. The second petitioner in this writ petition filed another writ petition separately being W.P.No.483 of 2006. The mother and two daughters filed the writ petition seeking a writ of mandamus declaring the action of the respondents 1 and 3 in executing the cancellation deed bearing document No.6330/2005, dated 22.12.2005 as illegal and arbitrary and for a consequential order restraining the respondents from alienating, transferring and conveying the house bearing No.13-54/1, plot No.14, Survey No.221, situated at P&T Colony,

Gaddiannaram village (hereafter called, 'the house'). The second writ petition being W.P.No.483 of 2006 is filed for a similar relief in respect of another cancellation deed bearing document No.6329/2005, dated 22.12.2005, executed by third respondent. Be it noted, the respondents in both the writ petitions are same and the third respondent is none other than the husband of the first petitioner and father of petitioners 2 and 3, as alleged in the writ petition. For the purpose of this order, the parties are referred to by their status in W.P.No.484 of 2006.

It is the case of the petitioners that the third respondent married the first petitioner in 1980 and during the wedlock petitioners 2 and 3 were born. The third respondent purchased house site admeasuring 200 square yards marked as plot No.14 in Survey No.221, Gaddiannaram village and later constructed a residential building with ground plus two floors bearing house No.13-54/1. The third respondent also purchased a commercial shop bearing No.2, ground floor, Manikanta Classic Complex (hereafter called, the mulgi) under a registered sale deed, dated 11.03.2005.

The third respondent allegedly, in 1990, developed illegal intimacy with one Smt.Padmavathi, divorced wife of Seshagiri Rao. This resulted in matrimonial disharmony between the first petitioner and the third respondent. The third respondent allegedly subjected the petitioners to physical and mental cruelty. In February 2005, well wishers of the family sought to settle the matter amicably. As part of the said settlement, the third respondent executed a registered gift deed bearing document No.3112/2005, dated 24.06.2005, in respect of 'house' in favour of all the three petitioners. On the same day, he executed another registered gift deed being document No.3111/2005 (wrongly typed in the affidavit as document No.3112/2005) in favour of second petitioner (petitioner in W.P.No.483/2006) in respect of mulgi. The petitioners allege that in pursuance of the two registered gift deeds, the petitioners took delivery of possession, got the property mutated in their names with Gaddiannaram Municipality and are enjoying the property. On 19.12.2005, the third respondent allegedly bet the petitioners, as a result of which, the first petitioner underwent surgery for compound fracture. After her discharge from the hospital, the petitioners came to know that the third respondent executed cancellation of gift deed on 22.12.2005. By registered document No.6329/2005, the gift deed in favour of the second petitioner was cancelled and by document No.6330/2005, the gift deed in favour of all the three petitioners was cancelled. Aggrieved by the same, the writ petition is filed.

The learned counsel for the petitioners submits that when once a gift deed is executed, the donor cannot cancel the same unilaterally. He submits that the third respondent cancelled the gift deed in collusion with first respondent without even giving any notice to the petitioners and the action of the third respondent being unfair, the same can be corrected in this public law remedy under Article 226 of Constitution of India. The learned counsel also relied on a decision of this Court in **K.Gopal Reddy v Secretary**.

When a person is aggrieved by registration of a document or for that matter, registration of a cancellation deed, a writ petition under Article 226 of Constitution of

India is not a proper remedy. There is no gainsaying that the power of judicial review under Article 226 of Constitution of India does not enable the High Court to redress – in public law; a grievance *de hors* the procedural and/or substantive laws governing the parties before it. There is no denial that the Registration Act, 1908 (for brevity, the Act) is a comprehensive law relating to registration of documents. The term 'document' is not defined in the Act. Indian Evidence Act, 1872 (Evidence Act) defines 'document' as to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. The illustrations under the definition 'document' in Evidence Act further elucidating that (i) a writing is a document; (ii) words printed, lithographed or photographed are documents; (iii) a map or plan is a document; (iv) an inscription on a metal place or stone is a document; and (v) a caricature is a document. Therefore, anything which records 'a matter', be it conveyance or re-conveyance, transfer or re-transfer of a title in the property, is treated as documents. Section 17 of the Act deals with the documents, which require compulsory registration. Instrument of gift of immovable property is one of the compulsorily registerable documents. Any document cancelling a registered document enumerated under Section 17 of the Act also requires registration; as such documents also fall within the description of Section 17(1)(b) of the Act. Be it noted, as per the said provision, any non-testamentary instrument, which creates a right or extinguishes a right, requires registration. A cancellation deed tends to extinguish the right created by or under a registered document and therefore registration is necessary. This Court is referring this aspect of the matter in the light of the question as to whether a writ petition would lie to nullify a non-testamentary instrument extinguishing the right that allegedly accrued under a gift deed.

Part XI of Registration Act deals with duties and powers of the registering officers. The Act does not confer anywhere the power to enquire into the validity of the document or to refuse registration. When a registering authority refuses to register document, he can only do so by recording reasons. Against any such refusal, an appeal is provided to the Registrar, and therefore, the aggrieved has to approach the civil Court under Section 77 of the Act. That a registering authority cannot refuse registration, is made clear by Rule 58 of A.P.Rules under Registration Act, 1908. The said Rule 58 reads as under.

> 58. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:
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> a. that the parties appearing or about to appear before him are not the persons they profess to be;
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> b. that the document is forged;
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> c. that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
>
> d. that the executing party is not really dead as alleged by the party

applying for registration; or

e. that the executing party is a minor or an idiot or a lunatic.

A reading of the above Rule would show that a limited power is given to registering officer to enquire into the validity of the document on the ground that the executing party has no right to execute the document. This power would be no more available the moment rightly or wrongly a document presented is registered by registering officer. In such case, the remedy of the aggrieved person whose right is allegedly extinguished by reason of such registered document is to seek appropriate declaration under Section 34 of the Specific Relief Act, 1963 and cancellation of the said document under Section 33 of the said Act. I n **Property Association of Baptist Churches v Sub Registrar, Jangoan**, this Court considered similar question and held that a writ petition would not lie.

In this case, there has been matrimonial disharmony between the first petitioner and the third respondent for more than a decade. The said discard between the wife and the husband became ugly, ultimately culminating in the third respondent registering gift deed for the 'house' to all the petitioners and for the mulgi to the second petitioner. Whatever be the reason, the third respondent now admittedly cancelled the gift deeds executed in June 2005. As the said cancellation deeds are already registered, the petitioners cannot now raise any objection before the first respondent. Under what circumstances initially the third respondent executed gift deeds in favour of the petitioners and under what circumstances he cancelled those gift deeds are matters, which cannot be gone into in the writ petition. The best remedy would be to seek cancellation of offending gift deeds executed by the third respondent by filing appropriate suits in the civil Court. In the matter of this nature – a family dispute; writ petition is not a proper remedy as it is a dispute essentially in the field of private law having its genesis in the strained relationship between the first petitioner and the third respondent, which can be resolved only in a civil Court. Liberty is reserved to the petitioners to seek appropriate redressal by filing suits in a civil Court, in which event, the civil Court shall decide the matter without in any manner being influenced by the observations made hereinabove.

The writ petitions, for the above reasons, are dismissed. No costs.

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(V.V.S.RAO,J)

24.01.2006.

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Note: LR copy be marked.

(By order)

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